

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JASON MARTINEZ,

Petitioner,

vs.

No. 16-cv-01280 RB/KRS

V. HORTON, et al.,

Respondents.

ORDER TO SHOW CAUSE

This matter is before the Court *sua sponte* under Fed. R. Civ. P. 41(b). On March 7, 2017, the Court ordered Petitioner Jason Martinez to pay the \$5 filing fee for this habeas corpus proceeding. (Doc. 8). To date, Petitioner has not paid the \$5 fee and, therefore, the Court will require Petitioner to show cause within 21 days of entry of this Order why this case should not be dismissed for failure to comply with the Court's Order.

This is a habeas corpus proceeding under 28 U.S.C. § 2254. The filing fee for a § 2254 proceeding is \$5. 28 U.S.C. § 1914. Petitioner did not pay the \$5 filing fee but, instead, filed his Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 4), supplemented by his six-month inmate account statement (Doc. 6). The Court conducted the analysis of the inmate account submitted by Petitioner under § 1915(b)(1) and determined that Petitioner has sufficient financial resources to prepay the \$5 filing fee for commencement of the action. Further, Petitioner's December 22, 2016 Application, signed under penalty of perjury, states "I do not have family or any source of incoming monies coming to me from any outside sources." (Doc. 4 at 1). However, his six-month inmate account statement, filed on January 19, 2017 in response to the Court's Order to Cure Deficiency, clearly shows cash receipts totaling

\$180.00 from “C. Martinez.” (Doc. 6 at 1-4). On March 7, 2017, the Court denied Petitioner leave to proceed pursuant to § 1915 and ordered Petitioner to pay the full \$5.00 filing fee within 30 days. (Doc. 8).

On March 16, 2017, Petitioner Martinez sent a letter to the Court Clerk claiming that he was submitting “(3) payments of 8.65 cents per month of March April and May.” (Doc. 9 at 1). Attached to the letter was an Inmate’s Request for Withdrawal of \$33.62 signed by Petitioner Martinez but not by any official of the Guadalupe Correctional Facility. (Doc. 9 at 2). The letter further stated “[d]ue to the Inner Mail System at this facility please credit my US District Court District of New Mexico Civil Docket for case no. 16-cv-01280 RB/LAM pending 20% of my additional payment of \$500.00 Dollars process fee”. (Doc. 9 at 1). No payment was included with the March 16, 2017 letter, nor has the Court received any payment from Petitioner Martinez.

Petitioner Martinez previously filed a prisoner civil rights case that was dismissed for failure to pay the initial partial filing fee payment of \$6.37 as ordered by the Court. *See Martinez v. Funk, et al.*, No. CV 16-00612 KG/LF, Doc. 15. In that case, the Court found that similar contentions regarding the inner prison mail system at Guadalupe County Correctional Facility were unsupported by any factual allegations. (16-cv-00612 KG/LF, Doc. 15 at 2).

Petitioner Martinez was denied leave to proceed *in forma pauperis* based on his financial ability to pay the \$5 fee and on a false statement in his Application. He was ordered to pay the \$5 filing fee within thirty (30) days. (Doc. 8). Petitioner did not pay the \$5 filing fee within the thirty day time period. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Petitioner will therefore be ordered

to show cause, within 21 days of entry of this Order why the case should not be dismissed for failure to comply with the Court's March 7, 2017 Order.

Accordingly, it is **ORDERED** that Petitioner Jason Martinez show cause on or before June 23, 2017 why this case should not be dismissed for failure to comply with the Court's March 7, 2017 Order.

A handwritten signature in cursive script, reading "Kevin Sweazea", written in black ink.

KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE